

## § 26.5

taken into consideration in deciding any matter in issue.

[48 FR 43304, Sept. 23, 1983; 48 FR 46980, Oct. 17, 1983]

### **§26.5 Disqualification of hearing officer.**

When a hearing officer believes there is a basis for disqualification in a particular proceeding, the hearing officer shall withdraw by notice on the record and shall notify the Secretary and the official initiating the action under appeal. Whenever any party believes that the hearing officer should be disqualified from presiding in a particular proceeding, the party may file a motion with the hearing officer requesting the hearing officer to withdraw from presiding over the proceedings. This motion shall be supported by affidavits setting forth the alleged grounds for disqualification. If the hearing officer does not withdraw, a written statement of his or her reasons shall be incorporated in the record and the hearing shall proceed.

#### REPRESENTATION OF THE PARTIES

### **§26.6 Department representative.**

In each case heard before a hearing officer under this part, the Department shall be represented by the General Counsel or designee.

### **§26.7 Respondent's representative.**

The party against whom the administrative action is taken may be represented at hearing as follows:

- (a) Individuals may appear on their own behalf;
- (b) A member of a partnership or joint venture may appear on behalf of the partnership or joint venture;
- (c) A bona fide officer may appear on behalf of a corporation or association upon a showing of adequate authorization;
- (d) An attorney who files a notice of appearance with the hearing officer may represent any party. For purposes of this paragraph, an attorney is defined as a member of the bar of a Federal court or of the highest court of any State; or
- (e) An individual not included within paragraphs (a) through (d) of this section may represent the respondent

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upon an adequate showing, as determined by the hearing officer, that the individual possesses the legal, technical or other qualifications necessary to advise and assist in the presentation of the case.

### **§26.8 Standards of practice.**

Attorneys shall conform to the standards of professional and ethical conduct required of practitioners in the courts of the United States and by the bars of which the attorneys are members. Any attorney may be prohibited by the Hearing Officer from representing a party if the attorney is not qualified under §26.7 or if such action is necessary to maintain order in or the integrity of the pending proceeding.

#### PLEADINGS AND MOTIONS

### **§26.9 Notice of administrative action.**

In every case, there shall be a notice of administrative action. The notice shall be in writing and inform the party of the determination. The notice shall state the reasons for the proposed or imposed action except where general terms are permitted by 24 CFR part 24. The notice shall inform the party of any right to a hearing to challenge the determination, and the manner and time in which to request such hearing. A supplemental notice may be issued in the discretion of the initiating official to add to or modify the reasons for the action.

### **§26.10 Complaint.**

(a) *Respondent.* A complaint shall be served upon the party against whom an administrative action is taken, who shall be called the respondent.

(b) *Grounds.* The complaint shall state the grounds upon which the administrative action is based. The grounds set forth in the complaint may not contain allegations beyond the scope of the notice of administrative action or any amendment thereto.

(c) *Notice of administrative action as complaint.* A notice of administrative action may serve as a complaint provided the notice states it is also a complaint and complies with paragraph (b) of this section.

(d) *Timing.* When the notice does not serve as a complaint, the complaint